



## POLICE DEPARTMENT

Febrary 3, 2011

MEMORANDUM:

Police Commissioner

Re:

Police Officer Danny Pepin  
Tax Registry No. 922953  
42 Precinct  
Disciplinary Case No. 85244/09  
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The above-named member of the Department appeared before the Court on November 23, 2010, charged with the following:

1. Said Detective Danny Pepin, while assigned to Narcotics Borough Manhattan South, on or about and between September 4, 2008 and October 8, 2008, after having been repeatedly directed by New York City Police Lieutenant John Patane, Tax # 904758, to conduct Department computerized checks as a part of his investigative assignment, did fail to comply with said directives.

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

2. Said Detective Danny Pepin, while assigned to Narcotics Borough Manhattan South, on September 22, 2008, after having been directed by New York City Police Sergeant, Corey Dailey, Tax # 913758, to conduct Department computerized checks as a part of his investigative assignment, did fail to comply with said directives.

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS

3. Said Detective Danny Pepin, while assigned to Narcotics Borough Manhattan South, on or about and between September 4, 2008 and October 8, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Detective did fail and neglect to conduct Department computerized checks as directed by competent authority.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

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4 Said Detective Danny Pepin, while assigned to Narcotics Borough Manhattan South, on September 22, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit said Detective did fail and neglect to conduct Department computerized checks as directed by competent authority

P G 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

5 Said Detective Danny Pepin, while assigned to Narcotics Borough Manhattan South, on October 13, 2008, was absent from his assignment without permission or police necessity, for approximately five hours and thirty-three minutes

P G 203-05, Page 1, Paragraph 2 - PERFORMANCE ON DUTY

The Department was represented by Vivian Joo, Esq , Department Advocate's Office, and the Respondent was represented by Peter Brill, Esq

The Respondent, through counsel, entered a plea of Not Guilty to Specification No 5 He pleaded Guilty to Specification Nos 1 and 2 and testified in mitigation of the penalty Specification Nos 3 and 4 were dismissed by the Department before trial A stenographic transcript of the trial-mitigation record has been prepared and is available for the Police Commissioner's review

DECISION

The Respondent is found Guilty of Specification No 5 Having pleaded Guilty to Specification Nos 1 and 2, the Respondent is found Guilty

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant John Patane as a witness

Lieutenant John Patane

Patane was assigned to Narcotics Borough Manhattan South (NBMS) as a module commander. The Respondent was one of his subordinate detectives. There were normally three to five detectives assigned to NBMS in "those two modules."

Patane supervised the investigation of kites. Kites were complaints of drug sales generated through 911, 311, and the like. These kites were assigned to detectives for investigation. The assigned detective was required to perform several computer checks. The purpose of the computer checks was to ascertain who lived at "that apartment" and their criminal histories. There were post-check conferrals, then observations of the location, then buy attempts. Patane asserted that the computer checks could be done in half a day if the detective was "uninterrupted." It was important for the computer checks to be completed before the observations because the detective might encounter an individual with a violent criminal history during the observation. This criminal history was something the detective would want to know beforehand. NBMS detectives also performed buy-and-bust operations, controlled narcotics purchases with confidential informants (CIs), and self-initiated cases.

Patane testified that in September 2008, the Respondent was assigned three kites. He was not working with any CIs and did not have any self-initiated cases.

Patane explained that a review log consisted of instructions from the supervisor to the investigating detective. Patane stated that the detective should examine the review log every

time he worked on the case Department's Exhibit (DX) 1 was the review log for a kite assigned to the Respondent The location was 60 Avenue D DD-5s generated by the Respondent were also attached to DX 1 DX 2 was the review log for a kite at 199 Avenue B The Respondent was assigned to this kite as well

Patane testified that the Respondent was allotted "administrative days" on September 25, 2008, and October 8, 2008, to work on his kites DX 3 and 4 were the roll calls and movement sheets for those dates, respectively

Patane testified that on Sunday, October 12, 2008, the Respondent told him that "he wasn't feeling well, that he had a hernia, and that he was going to need an operation and he didn't want to injure himself any further" Patane told him to work on his cases for the rest of the tour The Respondent asked if he could be excused the next day, Monday, October 13, 2008 (Columbus Day), and Patane agreed Patane told him, however, that if he did not go sick on Monday, he had to report to the Medical Division on Tuesday to be placed on restricted duty until his operation

Patane stated that later on Sunday, he "informed" Detective Shawna Mundy to call the Respondent and tell him that his tour for Monday would be 0427x1300 Mundy was instructed to tell the Respondent that if he went sick on Monday, he had to go regular sick The Respondent told Mundy that this was no problem and that he would likely go sick on Monday

Patane referenced Patrol Guide § 205-01, which requires a member calling out sick to call the sick desk at least two hours before the beginning of tour The Respondent could have called the sick desk prior to that two-hour mark also

Patane performed a 0425x1300 tour on Monday, October 13, 2008 The Respondent was not present for duty at 0427 hours Patane called the Respondent's cell phone at approximately

0530, but it went straight to voicemail. Patane got the same results at 0830. At approximately 0955, Patane verified from the sick desk that the Respondent had not gone sick. Five minutes later, Patane called the Respondent again and his wife answered. She put the Respondent on the phone. Patane testified that the Respondent sounded like he had just woken up. The Respondent apologized for not going sick hours before. He explained that he had taken pain medication, and overslept. Patane testified that the Respondent then called the sick desk and reported sick. Thus, Patane said, the Respondent was absent from his assignment for approximately 5 hours and 33 minutes.

On cross-examination, Patane testified that the Respondent had some problems prior to October 2008, and at best he met standards. He requested a transfer from NBMS, but Patane did not know the outcome. The decision to transfer the Respondent had to be made by higher-ranking members than Patane. He did not see the Respondent's treatment at the command change after he made the transfer request. The Respondent had rigorous supervision due to an earlier incident with a sergeant, in which he received a command discipline (CD).

It would not surprise Patane to learn that the Respondent received five CDs between March and September of 2008. He was aware of a CD received by the Respondent in August 2008 for failing to update a kite. A CD given that September for "failing to follow supervisory directions" probably was related to the kite review logs.

Patane asserted that the Respondent was uninterrupted on the two administrative days in late September and early October. He conceded that "additional interruptions" might occur during the tour that would not appear on the movement sheet. It was possible that the Respondent was in the office of Inspector (James) Guida (the commanding officer [CO]) for nearly an hour, receiving instruction.



Patane did not leave a voicemail when he called because he expected the Respondent to call right back. The lieutenant testified that while the Respondent was "technically" absent without leave (AWOL) on Monday, October 13, 2008, "[d]id I consider him AWOL, no, because I knew that he wasn't feeling well and that he was probably going to go sick." Patane wanted to give him "a little leeway" to wake up and get in touch. Guida, however, considered that because the Respondent was AWOL for more than four hours without calling in sick, he would be charged with misconduct.

Patane conceded that Patrol Guide § 205-18 was not followed. This procedure requires certain notifications when a member is AWOL for more than four hours after the scheduled start of tour.

Upon questioning by the Court, Patane stated that he had no problem with the Respondent's transfer request and did not take it personally. He forwarded the request to his superiors.

#### The Respondent's Case

The Respondent testified on his own behalf.

#### The Respondent

The Respondent was a Police Officer assigned to the 42 Precinct. He was previously a Detective at NBMS for 3 ½ years but was demoted. The demotion was related to the charges and specifications against him here. He asserted that he was told by a supervisor about negative evaluations at NBMS, but could not find them when he looked for them.

The Respondent testified that he loved working at NBMS before Guida's tenure as CO, but it became "a very hostile work environment." Shortly after Guida's arrival, the Respondent was involved in a "routine argument" with Sergeant Frank Fitzgerald. The Respondent characterized it this way because it happened on a weekly basis at least. Guida wanted to suspend the Respondent for the incident, which involved someone saying "go fuck yourself," but Fitzgerald advised him not to, saying "this was our routine thing." The Respondent was "kicked off" Fitzgerald's team. The sergeant retired two months later, and he and the Respondent remained good friends.

The Respondent claimed that after Fitzgerald retired, Guida told him he did not want him in the command anymore. Guida demanded that the Respondent fill out a transfer form, which he did. When the Respondent gave it to the inspector, Guida tore it up and said, "[Y]ou are not going nowhere." The Respondent "couldn't tell you" why he did this. Guida then called him back and ordered him to "give me a transfer, leave, I don't want you here no more." The Respondent complied and Guida denied it again. Guida told the Respondent if he applied for a transfer again, he would send him back to patrol. The Respondent replied that he had no problem with that. Guida told the Respondent "to go F myself." When the Respondent handed Guida a third memorandum requesting a transfer, the inspector said, "[I]f you leave here, I am taking your shield from you."

The Respondent testified that thereafter, Guida began disciplining the Respondent for things like illegible signatures, but also for failing to conduct computer checks. Each time, Guida told the Respondent that "this is for the go fuck yourself incident."

The Respondent testified that he was working on six to ten kites at any given time during October 2008. He did not think anyone on the team was assigned less than five. Everyone felt

that they did not have enough time to work on their kites because only one day out of five was reserved for this purpose. The other four days were for enforcement action. Working on the kites included observations and helping other members of the team. The Respondent testified that on one of the administrative days Patane talked about, he had to leave the building to perform observations with Sergeant Breinberg. Patane, the Respondent insisted, "said I had the whole day and I didn't do anything, just lounge around." The Respondent noted that the movement sheet for September 25, 2008, showed that he left with Breinberg to perform reconnaissance. Thus, the Respondent stated, "[I]t's not like I was just sitting around all day staring out the window the way they try to make it seem."

The Respondent asserted that he received a CD for a 15-day lapse in updating a kite, but other members merely were warned and admonished for longer periods. When he complained, Guida told him, "[Y]ou're Pepin, I can do whatever I want."

The Respondent testified that on Sunday, October 12, 2008, he came to work. He explained to Patane that he was in the emergency room the night before. The doctor diagnosed him with a hernia and prescribed oxycodone (sold under the brand name OxyContin). The Respondent could not take this medication at work because it made him too drowsy. The Respondent asked to stay in the office and work on his kites for the rest of the tour, and Patane approved. When the Respondent left for the day, he told Patane that the pain was so extreme that he was going to call in sick the next day.

The Respondent received the call from Mundy "reiterating everything I had just said." He explained to Mundy that he already knew the procedure, and she replied that "he wanted to remind me."



The Respondent explained that he did not know a member could call the sick desk the day of the week before the tour in question. He took the OxyContin and waited until midnight to call the sick desk, but passed out from the effects of the medication. He claimed to have no knowledge of Patane calling his cell phone, noting that there were no missed calls and that the phone would have rung before going to voicemail. When Patane did get in touch with the Respondent, the lieutenant instructed him to tell the sick desk he was performing a 1200x2000 tour, that way, he would have no problem with the sick desk.

Later that day, however, two lieutenants came to the Respondent's home and removed his shield and firearm. Guida was accusing him of taking illegal narcotics. He ordered the Respondent to produce the prescription and go to Psychological Services. At the end of October or beginning of November 2008, after the Respondent returned from a subsequent sick leave of approximately two weeks, he learned that he was charged with being AWOL.

The Respondent asserted that he accepted the CDs in question because Guida told him that he would receive a penalty of 10 vacation days.

On cross-examination, the Respondent admitted that he had about 21 days to perform the computer checks on the Avenue D kite. He completed most of them. On most kites, there were seven mandatory checks. Others became necessary depending on the case. He was directed by several supervisors to perform these checks.

The Respondent testified that certain checks were ordered in the review log by Sergeant Dailey. The sergeant, "being a person that sat five feet from me, I would assume would have said, Pepin, do this, and I would have done it." The Respondent admitted, nevertheless, that he should have read the review log.

The Respondent understood Patane's testimony, but testified that realistically it took longer to perform certain checks, like eJustice or 311, because they were not Department applications. It took him only a moment to fill out an eJustice request form, but another individual conducted the actual check, and it took one to three days until the Respondent received the result. 311 requests had to be done at the precinct. Moreover, 911 recordings took four weeks to come back.

Upon questioning by the Court, the Respondent testified that he and Fitzgerald "had our own little way of dealing with each other." They cursed at each other, as did other detectives with Fitzgerald. Once "our discussion" ended, and the tour was over, "we go out and have a couple of beers together, hang out, no problems." During the incident in question, the Respondent and others were processing arrests at the 6 Precinct. A lieutenant there wanted one of the prisoners taken to the hospital, but Fitzgerald told the Respondent not to do so. The Respondent then got into the middle of an argument between the lieutenant and the sergeant, in which Fitzgerald blamed the Respondent. The Respondent told Fitzgerald "that's fucked up," and they "keep going with each other." Fitzgerald told the Respondent that he was being insubordinate. Guida got involved "somehow."

### FINDINGS AND ANALYSIS

#### Specification Nos. 1 & 2

The Respondent, having pleaded Guilty, is found Guilty.

Specification No. 5

The Respondent is charged with being absent from his assignment without leave. The facts were not very much in dispute. On Sunday, October 12, 2008, the Respondent told his supervisor, Patane, that he was experiencing severe pain caused by a hernia for which he went to the emergency room the night before. Because of that, and the OxyContin (an opiate medication) he was prescribed, he wanted to go sick the next tour, Monday, October 13, 2008. Patane told him this was okay, but later had a message sent to the Respondent that he was required to call in sick the next day to the Medical Division, telling Patane would not be sufficient. The Respondent's tour for October 13, 2008, was scheduled to begin at 0427 hours. Thus, he was required to call the Medical Division's sick desk no later than 0227 hours. See Patrol Guide § 205-01 (requiring member to call at least two hours before start of tour).

On Sunday evening, the Respondent took the OxyContin and fell asleep. His incorrect understanding was that he could not call the sick desk until midnight Monday, i.e., the calendar day of the tour for which he was calling in sick. He slept past 0227 hours on Monday, October 13, 2008. This was the latest point at which he could have called the sick desk. Patane said that cell phone calls were made to the Respondent, the Respondent denied this. In any event, around 1000 hours, the Respondent's wife told him that his cell phone rang and his command was on the line. The Respondent told Patane that he had overslept. Patane allowed the Respondent to change tours to later in the day of October 13, 2008.

The Respondent argued that he was not really absent without leave because he had permission from Patane to go out sick. He contended that other supervisors overruled Patane to make the process more cumbersome. The Court disagrees. The Respondent was made aware of the procedure that he needed to follow, and failed to follow it. It is the obligation of members of

the Department to adhere strictly to sick-leave procedures See Case No 81220/05, signed Jan 29, 2007 (officer informed a supervisor that she could not work an overtime assignment, but went home before learning whether someone had been re-assigned to her scheduled overtime), Case No 78815/03, signed Nov 8, 2004 (when officer's leave requests were denied by lieutenant, he asked his sergeant for permission, after the sergeant said he would "take care of it," officer wrongly assumed he had received permission) Because the Respondent failed to do so, the Court finds that he was absent from his assignment without permission, and is therefore Guilty of Specification No 5

#### PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See Matter of Pell v Board of Education, 34 N Y 2d 222, 240 (1974) The Respondent was appointed to the Department on August 31, 1998 Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum

The Respondent has been found Guilty of being absent from his assignment without permission He was supposed to call the Medical Division to report sick, but overslept due to the prescribed pain medication he took the night before

The Respondent also pleaded Guilty to the failure to perform his work assignment in a satisfactory manner The Respondent was an investigator in Manhattan South Narcotics, and the command had a computerized system for investigating "kites," cases that were begun on tips from the public The system had "review notes," in which the investigators could communicate with each other Much preliminary work was necessary for kites, including a variety of

computer checks on the locations in question, before enforcement action could be taken. In mitigation, the Respondent asserted that he did not have sufficient time to perform the necessary checks

The Court does not see how that could be the case. For example, in the review notes for the Avenue D investigation (DX 1), the Respondent was told on September 4, 2008, to perform certain checks. Yet, five weeks later, on October 12, 2008, he was told that the checks had not been completed. This was even with the administrative days he had been given. These were tours in which his sole assignment was performing the checks. The Respondent pointed out that the movement sheet demonstrated that he was out of the office on an observation for half an hour on one of these days. Even if the Respondent was called out on other assignments during these administrative days, and even if getting the results of the checks took time, the Court does not see why the checks were not finished after five weeks. The Respondent's testimony did nothing to mitigate or explain this. Nor did the Respondent explain why the checks on the Avenue B address (DX 2) were not completed, as directed by Sergeant Dailey, before observations of the location were performed.

The Respondent pleaded Guilty to the original specifications on September 29, 2009, in exchange for a recommended penalty of 15 vacation days. The plea was rejected by the Police Commissioner on January 13, 2010, with an endorsement that there should be a forfeiture of 15 vacation days, and placement on one year of dismissal probation.

In the Respondent's view, 'given the circumstances that you now have and the facts as you now have them' (summation at 80), dismissal probation is inappropriate. The Court disagrees. As described in the attached memorandum, the Respondent has been in monitoring

programs for over two years. Although he has been demoted to the rank of Police Officer and is no longer assigned to Narcotics, the Court believes that a monitoring period is still called for.

Accordingly, the Court recommends, as the penalty, that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code of the City of New York, during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that the Respondent forfeit 15 vacation days.

Respectfully submitted,



David S. Weisel  
Assistant Deputy Commissioner – Trials

**APPROVED**  
JUL 19 2011  
  
RAYMOND W. KELLY  
POLICE COMMISSIONER



POLICE DEPARTMENT  
CITY OF NEW YORK

From Assistant Deputy Commissioner – Trials  
To Police Commissioner  
Subject CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DANNY PEPIN  
TAX REGISTRY NO 922953  
DISCIPLINARY CASE NO 85244/09

In his last three annual evaluations the Respondent received an overall rating of 3.5  
“Highly Competent/Competent,” 4.5 “Extremely Competent/Highly Competent,” and 4.0  
“Highly Competent.” He has been awarded one medal for Excellent Police Duty [REDACTED]

[REDACTED] From August 14, 2008, to  
December 28, 2009, he was placed on Level I Performance Monitoring as a result of negative  
performance evaluations. On December 29, 2009, he was placed on Level II Discipline  
Monitoring as a result of the present case.

For your consideration.



David S. Weisel  
Assistant Deputy Commissioner – Trials